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Francois Bocquier

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EXAMINER

HAYES, KRISTEN C

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,499	Applicant(s) BOCQUIER, FRANCOIS	
	Examiner KRISTEN C. HAYES	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 21-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 21 contains the confusing limitation of "pruning machine comprising: at least one cutter bar." The invention of the original disclosure is towards an apparatus for detecting mating of animals.
3. Claims 30 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
4. In claim 30, it is unclear as to how the means for identifying the female by processing is activated by the means for detecting.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 21-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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7. In claim 21, it is unclear if the preamble ends at "the apparatus comprising:" or at "pruning machine comprising."

8. In claim 21, lines 4, 7, it is unclear if the means for detecting and the means for identifying are the same element.

9. In claim 21, lines 4, 5, it is unclear how the "means for said passive electronic tag . . . [is] activated by said . . . means for detecting."

10. Claim 23 does not further structurally limit the device and seems to recite method steps.

11. Claim 24 claims a means for writing onto said electronic tag; it is unclear as to what is being written.

12. It is unclear if the harness of claim 25 is the fastener of claim 21 or an additional element.

13. In claim 25, the means for identifying is claimed as having an antenna. However, from the specification, it seems the means for attaching comprises an antenna that sends signals to the means for identifying. The means for identifying does not comprise an antenna.

14. Claim element "means for writing" (claim 24) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The specification discloses that the device itself is capable of performing this function, but it is unclear as to what element of the device can perform the function.

15. Claim element "means for identifying" (claim 21) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The specification does not disclose structure to perform this function.

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16. Claim element "means for transmitting " (claim 32) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. It is unclear as to what element performs the function of transmitting

17. Claim element "means for processing" (claim 33 and 34) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. It is unclear as to what element performs the function of processing identifications.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

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(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

19. Claims 21-25 and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by McAlister US 4,503,808.

20. Regarding claims 21 and 22, McAlister discloses an apparatus for automatically detecting an attempt at mating a female by a detecting animal, the apparatus comprising a passive electronic tag (18); means for detecting said passive electronic tag (20), said passive electronic tag being activated by said means for detecting (McAlister, column 5: lines 43-48) (as best understood); pruning machine comprising: at least one cutter bar (as best understood); a means for identifying said passive electronic tag (within 20); and a fastener (22) connected to said means for detecting and said means for identifying.

21. Regarding claim 23, McAlister further discloses said means for detecting and said means for identifying emitting a magnetic field (as best understood).

22. Regarding claim 24, McAlister further discloses the means for identifying comprising means for writing (28) onto said electronic tag (as best understood).

23. Regarding claim 25, McAlister further discloses a harness (22) attached to the means for identifying, said means for identifying having an antenna (McAlister, column 5: lines 44-46).

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24. Regarding claim 31, McAlister further discloses means for determining time and date of each mounting attempt (McAlister, column 5: line 44; column 6: line 8).

25. Regarding claim 32, McAlister further discloses means for transmitting (McAlister, column 5: lines 45-49) at least one part of the identifications of the female animal identified by said means for identifying.

26. Regarding claim 33, McAlister further discloses means for processing identifications of female animals (28).

27. Regarding claim 34, McAlister further discloses the means for processing (McAlister, column 6: lines 3-24).

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claims 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister US 4,503,808 in view of Starzl et al. US 5,542,431.

30. Regarding claim 28, McAlister discloses a sensor (18) under a belly of the detecting animal, but does not disclose the sensor being a temperature sensor. Starzl et al. teach a temperature sensor (442). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of McAlister with a temperature sensor as disclosed by Starzl et al. so as to provide information about the ambient environment of the cow, which may help determine information about the cow's heat cycle.

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31. Regarding claim 29, McAlister discloses the device of claim 21, but does not disclose the means for detecting comprising a motion sensor. Starzl et al. teach a motion sensor (Starzl et al., Figure 13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of McAlister with a motion sensor as disclosed by Starzl et al. so as to aid in determining information about the cow's heat cycle.

Allowable Subject Matter

Claims 26, 27 and 30 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

32. Applicant's arguments filed 12/23/2009 have been fully considered but they are not persuasive.

33. The rejections of paragraphs 12-15 are not rejections under lack of enablement, they are 112 2nd paragraph rejections. The claims mentioned in these paragraphs fail to comply with 112 6th paragraph and are therefore rejected as being indefinite.

34. The electronic tag of McAlister is considered passive, as it does not include a source of power that than operate on its own. The device is powered by heat or the sun.

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. HAYES whose telephone number is (571)270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
9 March 2010

/Rob Swiatek/
Primary Examiner, Art Unit 3643
10 March 2010

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